

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MATTHEW BENJAMIN MAJOR,

Petitioner,

v.

WARDEN R. FISHER,

Respondent.

CASE NO. 1:21-cv-00443-AWI-SKO (HC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CASE TO BE
CLOSED, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY**

(Doc. No. 6)

Petitioner Matthew Benjamin Major is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 22, 2021, the magistrate judge assigned to the case issued a findings and recommendation that recommended the summary dismissal of the petition. Doc. No. 6. This findings and recommendation was served upon all parties and contained notice that any objections were to be filed within twenty-one days from the date of service of that order. On April 6, 2021, Petitioner filed objections. Doc. No. 7.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a de novo review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court concludes that the magistrate judge's findings and recommendation is supported by the record and proper analysis.

In addition, the Court declines to issue a certificate of appealability. A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate of

1 appealability is 28 U.S.C. § 2253, which provides as follows:

2 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
3 district judge, the final order shall be subject to review, on appeal, by the court of
4 appeals for the circuit in which the proceeding is held.

5 (b) There shall be no right of appeal from a final order in a proceeding to test the
6 validity of a warrant to remove to another district or place for commitment or trial a
7 person charged with a criminal offense against the United States, or to test the
8 validity of such person's detention pending removal proceedings.

9 (c)

10 (1) Unless a circuit justice or judge issues a certificate of appealability, an
11 appeal may not be taken to the court of appeals from—

12 (A) the final order in a habeas corpus proceeding in which the
13 detention complained of arises out of process issued by a State
14 court; or

15 (B) the final order in a proceeding under section 2255.

16 (2) A certificate of appealability may issue under paragraph (1) only if the
17 applicant has made a substantial showing of the denial of a constitutional
18 right.

19 (3) The certificate of appealability under paragraph (1) shall indicate which
20 specific issue or issues satisfy the showing required by paragraph (2).

21 If a court denies a petitioner's petition, the court may only issue a certificate of
22 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
23 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
24 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
25 been resolved in a different manner or that the issues presented were 'adequate to deserve
26 encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting
27 Barefoot v. Estelle, 463 U.S. 880, 893 & n.4 (1983)).

28 In the present case, the Court finds that Petitioner has not made the required substantial
showing of the denial of a constitutional right to justify the issuance of a certificate of
appealability. Reasonable jurists would not find the Court's determination that Petitioner is not
entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
proceed further. Thus, the Court will decline to issue a certificate of appealability.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendation (Doc. No. 6), entered on March 22, 2021, is ADOPTED in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is DISMISSED;
3. The Clerk of Court is directed to ENTER judgment and CLOSE the case;
4. The Court DECLINES to issue a certificate of appealability; and
5. This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: April 14, 2021



SENIOR DISTRICT JUDGE